



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
 MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site, or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenant filed seeking a Monetary Order for the return of double his security deposit.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of hearing documents and evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that two Tenants and the Landlord entered into a written fixed term tenancy agreement that began on October 8, 2009. Rent was payable on the

first of each month in the amount of \$1,050.00 and on October 8, 2009 the Tenants paid \$525.00 to the Landlord as the security deposit.

The Tenant's Witness testified that she was the Tenant's sister and she moved into the second bedroom of the apartment mid September 2010 with her fiancée after the Tenant's roommate moved out. Upon moving in she met with the Resident Manager and they filled out the application forms to become tenants. Her father was required to sign as a guarantor for rent so he signed the form and returned it to the Resident Manager via fax.

The Witness advised her brother vacated the property prior to her and her fiancée. On December 27, 2010 a message was left for the Resident Manager requesting the move out inspection be conducted on December 31, 2010 at 2:00 p.m. When she saw the Resident Manager in the hall the morning of December 31, 2010 she asked if the move out would be conducted that day at 2:00 p.m. at which time the Resident Manager told her she could not attend the move out inspection because she was not on the lease. She confirmed with the Resident Manager that she had received the move out form that was completed and put through the slot in her office door.

The Witness stated that they fully cleaned the apartment. They moved the fridge and stove cleaning behind them and ensured the unit was completely cleaned. They followed all of the instructions that were left in the move out package that was taped to their door on December 20, 2010. In that package was a move out form that was completed listing the Tenant's forwarding address and was returned to the Resident Manager on December 28, 2010 through her office door.

The Property Manager confirmed receipt of the Witness's application and stated that the application was refused. He asked the Witness if she was informed of the refusal and if she received written notification of the refusal to rent.

The Witness responded that she had received a phone call that stated there was a problem with her application and she left messages for both the Resident Manager and the Landlord's office however no one ever got back to her. She said she did not receive anything in writing to say she was refused tenancy.

The Property Manager testified she informed the Tenant that his sister and her fiancée's application were refused and they would have to move. He responded by saying they had nowhere else to go. The Property Manager confirmed she made no further attempts to have them vacate the property, she "decided to let them stay" and did not add them to the lease.

I asked the Resident Manager if the Witness or her fiancée had ever paid her the rent to which she initially responded saying the rent was paid by the Tenant and then she stated she could not recall. Then she clarified that often tenants would put the rent through the slot in her office door so therefore she could not determine who actually delivered the payment.

The Resident Manager confirmed she had spoken to the Witness several times the morning of December 31, 2010 and she did tell the Witness that she could not attend the move out inspection because she was not on the lease. She did not have anything issued by the Tenant to indicate the Witness could not act on behalf of the Tenant.

The Resident Manager testified that she had a discussion with the Tenant when he told her he would be going out of town and they both agreed to conduct the move out inspection on January 3, 2011. She then posted the final notice of move out inspection to the Tenants door on December 31, 2010 at 2:00 p.m. which indicates the inspection would be conducted at that time. She confirmed the Witness and her fiancée had vacated the rental unit prior to her posting the Final Notice to the door. She stated that she did not receive the Tenant's move out forms and did not tell the Witness they were received.

The Resident Manager said she cleaned the rental unit and that it took her about eight hours. She said the work was performed on December 31, 2010. She did not provide additional testimony as to what work was actually performed.

The Property Manager testified the unit was re-rented beginning January 1, 2011 and the new tenancy agreement was signed on December 22, 2010. He confirms receipt of the Tenant's notice to end tenancy on November 30, 2010 and the tenancy was scheduled to end December 31, 2010. He stated that according to his information the Resident Manager could not get confirmation of an inspection date so a final notice was posted on the door. The Tenant returned January 3, 2011 at which time the Resident Manager told him to contact the office. The Tenant did not contact the office until January 28, 2011 and at that time he refused to sign the move out inspection so he could get the balance of his security deposit, and he refused to provide his forwarding address on the move out form. Their office did not receive the Tenant's forwarding address until February 28, 2011 when they received the Agent's letter and they subsequently filed for dispute resolution.

The Tenant's Agent testified he attended the rental unit and assisted the Tenant with his move out on December 28, 2010. The three part move out form was completed by the

Witness on behalf of the Tenant over the Christmas break while they were all at home. This form was then placed through the Landlord's mail slot on her office door by the Tenant on December 28, 2010 after they loaded up his possessions and were ready to leave.

The Tenant's Agent stated that this entire issue is around dates. He pointed out the Resident Manager's testimony confirms that prior to the Tenant returning home for Christmas she agreed to conduct the move out inspection on January 3, 2011, knowing full well that new people had already agreed to move into the unit January 1, 2011. The Resident Manager knew the Witness lived there and knew they were told to be out by 1:00 p.m. so why would she wait until 2:00 p.m. to post the final notice and begin the inspection at that time.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of the tenancy agreement, move-in and move-out inspection report, notice of final opportunity to schedule a condition inspection, copies of letters between the parties, and a typed statement from the Tenant.

A significant factor in my considerations is the credibility of the Agents for the Landlord. I am required to consider their evidence not on the basis of whether their testimony "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The evidence supports the Resident Manager agreed to conduct the move-out inspection on January 3, 2011, a date that she ought to have known would have the new tenants occupying the unit. The evidence also confirms the Resident Manager was informed by the Tenant that his sister, the Witness, and her fiancée would be occupying the unit after he would be vacating.

I find the Resident Manager posted the final notice to conduct inspection in breach of the Act. Posting a notice after the Tenant has vacated the property does not meet the service requirements under section 88 or 90 of the Act. Furthermore, I find the Resident Manager's actions of purposely waiting until the unit was empty before posting the notice of inspection and posting it at the exact time the inspection is to be conducted to be a wilful action of deceit.

Section 15 (1) of the *Residential Tenancy Regulation* provides that a tenant may appoint an agent to act on his or her behalf to attend a condition inspection and to sign a condition inspection report.

Based on the aforementioned, I find there is insufficient evidence to support the Landlord had grounds to refuse the Witness's request to attend the move out inspection as either an occupant or as an Agent for the Tenant.

Based on a balance of probabilities, I accept the Tenant's Agent's testimony and the Witness's testimony that the Tenant delivered the completed move out form to the Landlord on December 28, 2010 by placing it through the Landlord's office door. Based on the Resident Manager's testimony this method of delivery is an acceptable form of delivery for receipt of monthly rent payments, therefore I consider it acceptable for the delivery of move out forms.

The evidence supports this tenancy ended December 31, 2010, and the forwarding address was provided through the Landlord's mail slot on December 28, 2010 and is therefore deemed to be received on December 31, 2010, three days after it was put through the door (or posted to the door) in accordance with section 90 of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than January 15, 2011. The Landlord filed their application March 07, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find the Tenant has met the burden of proof and I approve his claim for the return of double the security deposit plus interest in the amount of **\$1,050.00** (2 x \$525.00 + 0.00 interest).

As per the aforementioned I do not accept the move out inspection report to be a valid indication of the condition of the rental property at the end of the tenancy. Furthermore there is insufficient evidence to support the Tenant was informed that the carpets were

scheduled to be steamed cleaned and that this would be completed at his expense. Therefore I find there to be insufficient evidence to support the Landlord's claim for damages and I hereby dismiss their claim without leave to reapply.

The Landlord has not been successful with their application; therefore they must bear the burden of the cost of filing their application.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **\$1,050.00**. This Order must be served upon the Landlord and may be enforced through Provincial Court as an Order of that Court.

The Landlord's application is HEREBY DISMISSED, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 17, 2011.

Residential Tenancy Branch